

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-23629-2023 (O&M)
Date of Decision: 26.05.2023

VINOD

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Mohit Garg, Advocate
for the petitioner.

Mr. R.K. Singla, D.A.G., Haryana.

HARSH BUNGER, J. (ORAL)

Petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 139, dated 15.04.2023, under Section 379 of Indian Penal Code (in short "IPC") and Section 3 of Prevention of Damages to the Public Property Act, 1984 (Sections 457/380 IPC added later on and Section 379 IPC deleted), registered at Police Station Chandimandir, District Panchkula (Annexure P-1).

2. Upon issuance of notice in this case, reply by way of an affidavit dated 16/23.05.2023 of Sh. Kishori Lal, HPS, Assistant Commissioner of Police, Panchkula, on behalf of respondent-State of Haryana, has been filed in the Court today, which is taken on record, subject to all just exceptions.

3. Briefly, the afore-stated FIR was registered on the complaint of Lt. Col. Anuj Sharma working as Security Officer in DRDO wherein it was stated that on 15.04.2023 at about 8:00 pm, a patrolling party while patrolling alongside the boundary wall of TBRL in front of Village Bhanu, then inside

the boundary wall three persons were taking out copper from wire by burning the wires. Upon seeing the patrolling party, two persons ran away and one person was apprehended by patrolling party who disclosed his name as Yaseen Khan son of Shukardeen; who further disclosed the names of two persons, who ran away, as Poli of Village Kotli and Vinod (petitioner) of Village Billa. It is alleged that the said three persons have damaged the public property and stolen the wires; accordingly legal action was sought against Yaseen Khan, Poli and Vinod (petitioner), whereupon, the instant case FIR was registered.

4. Apprehending his arrest in this case, the petitioner approached the Court of Sessions Judge, Panchkula seeking grant of pre-arrest bail by filing an application, however, the same was declined by the learned Sessions Judge, Panchkula, vide order dated 27.04.2023 (Annexure P-2). Accordingly, the petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail.

5. Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case on the basis of an alleged disclosure statement of co-accused Yaseen Khan, which is not admissible. It is submitted that the petitioner has no concern with the alleged crime. It is next submitted that no case under section 380/457 IPC is made out against the petitioner. It is further submitted that the petitioner is ready to join the investigation and to comply with other conditions as may be imposed by this Court or by the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

6. Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on account of seriousness of the offence. It is submitted that the petitioner is named in the FIR and the

custodial interrogation of the petitioner is required for complete investigation of this case. Accordingly, prayer for dismissal of the petition has been made.

7. I have heard learned counsel for the parties and also gone through the paper book as well as the status report filed on behalf of the State of Haryana.

8. In this case, petitioner has been specifically named in the FIR. Petitioner is an accused for offence under Sections 457, 380 of IPC and Section 3 of Prevention of Damages to the Public Property Act, 1984. As regards, the submission of the petitioner that the statement of the co-accused is not admissible in evidence; suffice it to say that as per Section 30 of the Evidence Act, when more than one persons are being tried jointly for the same offence and a confession made by one of such persons affecting himself and other of such person, is proved then the Court may take into consideration such confession as against such other person as well as against the person who make such confession. Even otherwise, such statement can certainly be looked into for providing lead in the investigation.

9. Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine.

10. In *Adri Dharan Das v. State of W.B.*, 2005(4) SCC 303, the Hon'ble Apex court held that ordinarily the courts will not interfere in the investigation of a crime or with arrest of an accused in a cognisable offence. It was held that arrest was a part of process of investigation which enables the unraveling of the various facets crime including the motive, preparation and its commission. Arrest also leads to information leading to discovery of material facts.

11. In case of *State represented by the C.B.I. Versus Anil Sharma*, 1997(4) R.C.R.(Criminal) 268, Hon'ble Apex Court had observed that

custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail.

12. Custodial interrogation of the petitioner is definitely required for complete and effective investigation. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

13. Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No. 139, dated 15.04.2023, under Section 379 of IPC and Section 3 of Prevention of Damages to the Public Property Act, 1984 (Section 457/380 IPC added later on and Section 379 IPC deleted), registered at Police Station Chandimandir, District Panchkula; is dismissed.

14. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

15. All pending application/s, if any, shall also stand closed.

May 26th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No